

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumers' Action Network (UCAN),

Complainant,

vs.

Pacific Bell Telephone Company, AOL-Time
Warner, Inc., Does 1-100,

Defendant.

Case 02-07-044
(Filed July 24, 2002)

ORDER EXTENDING STATUTORY DEADLINE

Pub. Util. Code § 1701.2(d) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending the deadline.

Case 02-07-044 was filed on July 24, 2002. In a telephone status conference on December 17, 2002, all parties agreed that they were working with Commission staff and that settlement discussions were progressing. They stated that the case might be resolved without the need for evidentiary hearings.

Accordingly, the Utility Consumers' Action Network (UCAN) asked that the statutory deadline be extended from June 23, 2003, to December 31, 2003. The Commission granted the extension well in advance of the statutory deadline because the parties were developing a test of Internet calling procedures that are the subject of this complaint. The test was to extend beyond June 2003 and was to be followed by evaluation of test results and further settlement discussions.

On April 30, 2003, and on June 4, 2003, further conferences were conducted, and the parties asked for further extensions to continue settlement discussions. The extensions were granted. On August 12, 2003, a Prehearing Conference (PHC) was conducted, at which time it became apparent that settlement prospects were not encouraging. The matter was set for hearing on February 23, 2004, and later postponed at the request of the parties to April 26-30, 2004.

On March 26, 2004, UCAN and Pacific Bell Telephone Company (Pacific) filed a proposed settlement agreement between them, and jointly moved for Commission approval. AOL-Time Warner, Inc. was not a party to the settlement. Based on this development, the assigned Administrative Law Judge (ALJ) stayed the evidentiary hearing scheduled for April 26-30, 2004, and, in its place, scheduled a hearing on April 27 and 28, 2004, to take testimony on the proposed settlement and to hear from the parties on rescheduling of the evidentiary hearing. The ALJ commented that until the proposed settlement was approved or disapproved by the Commission, it made little sense to proceed with the evidentiary hearing since it could not be certain what active parties would be involved.

Since proceedings involving the proposed settlement are likely to extend final resolution of this case beyond July 31, 2004, we deem it prudent to extend the statutory deadline for final resolution of the case to ensure that no violation of Pub. Util. Code § 1701.2(d) occurs.

A final decision on the settlement proposal should issue by mid-year 2004. If an evidentiary hearing is scheduled thereafter, it should be conducted and briefed by the fall of 2004. A final decision should issue by December 31, 2004. Accordingly, the statutory deadline for resolution of this case should be extended to December 31, 2004.

Under Rule 77.7(f)(4) of the Rules of Practice and Procedure (Rules), the Commission may reduce or waive the period for public review and comment of draft decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 77.7(f)(4), the otherwise applicable § 1701.2(d) statutory deadline for public review and comment is being waived.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned ALJ for this proceeding.

Findings of Fact

1. This proceeding was initiated on July 24, 2002, as an adjudicatory proceeding.
2. At the request of the parties, the Commission extended the statutory deadline for resolving this case to December 31, 2003, so that the parties could conduct various tests and pursue settlement.
3. At a PHC on August 12, 2003, the parties reported that settlement had not been reached and requested a further extension of the statutory deadline so that settlement could be further pursued.
4. In Decision 03-09-060, the statutory deadline was extended to July 31, 2004.
5. On March 26, 2004, UCAN and Pacific filed a proposed settlement agreement between them and jointly moved for Commission approval.
6. A hearing on the settlement proposal was scheduled for April 27 and 28, 2004.
7. A decision on the proposed settlement is anticipated in mid-2004, to be followed by an evidentiary hearing on remaining issues in the case.
8. A final decision in this proceeding is to be issued on or before December 31, 2004.

Conclusion of Law

The 12-month deadline imposed by Pub. Util. Code § 1701.2(d), which had been extended to July 31, 2004, should be further extended to December 31, 2004.

IT IS ORDERED that the 12-month statutory deadline in this proceeding, which earlier was extended to July 31, 2004, is further extended to December 31, 2004.

This order is effective today.

Dated _____, at San Francisco, California.